

likely than not that an article to be imported into the United States is a covered article, not later than 30 days after receipt of the allegation described in that subsection with respect to that determination, the Commission shall—

“(A) issue an order directing that the article concerned be excluded from entry into the United States under subsection (a); and

“(B) notify the President of that determination.

“(2) PRESIDENTIAL REVIEW.—If, before the end of the 30-day period beginning on the day after the date on which the President is notified under paragraph (1)(B) of the determination of the Commission under subsection (c)(1), the President disapproves of that determination and notifies the Commission of that disapproval, effective on the date of that notice, that determination shall have no force or effect.

“(3) EXCLUSION OF COVERED ARTICLES.—

“(A) NOTIFICATION.—Upon expiration of the 30-day period described in paragraph (2), or notification from the President of approval of the determination of the Commission under subsection (c)(1) before the expiration of that period, the Commission shall notify the Secretary of the Treasury and the Secretary of Homeland Security of its action under subsection (a) to direct the exclusion of covered articles from entry.

“(B) REFUSAL OF ENTRY.—Upon receipt of notice under subparagraph (A) regarding the exclusion of covered articles from entry, the Secretary of the Treasury and the Secretary of Homeland Security shall refuse the entry of those articles.

“(4) CONTINUATION IN EFFECT.—Any exclusion from entry of covered articles under subsection (a) shall continue in effect until the Commission—

“(A) determines that the conditions that led to such exclusion from entry do not exist; and

“(B) notifies the Secretary of the Treasury and the Secretary of Homeland Security of that determination.

“(5) MODIFICATION OR RESCISSION.—

“(A) IN GENERAL.—An interested person may petition the Commission for a modification or rescission of an exclusion order issued under subsection (a) with respect to covered articles only after an affirmative extension of the order is issued under subsection (c)(3) in accordance with the procedures under subsection (c)(2).

“(B) REVISITATION OF EXCLUSION.—The Commission may modify or rescind an exclusion order issued under subsection (a) at any time at the discretion of the Commission.

“(C) BURDEN OF PROOF.—The burden of proof in any proceeding before the Commission regarding a petition made by an interested person under subparagraph (A) shall be on the interested person.

“(D) RELIEF.—A modification or rescission for which a petition is made under subparagraph (A) may be granted by the Commission—

“(i) on the basis of new evidence or evidence that could not have been presented at the prior proceeding; or

“(ii) on grounds that would permit relief from a judgment or order under the Federal Rules of Civil Procedure.

“(E) EVIDENTIARY STANDARD.—A modification or rescission may be made under subparagraph (A) if the Commission determines that there has been a clear and convincing showing to the Commission from an interested person that such a modification or rescission should be made.

“(e) JUDICIAL REVIEW.—

“(1) IN GENERAL.—Any person adversely affected by a final modification or rescission determination by the Commission under sub-

section (d)(5) may appeal such determination only—

“(A) in the United States Court of Appeals for the Federal Circuit; and

“(B) not later than 60 days after that determination has become final.

“(2) NO OTHER JUDICIAL REVIEW.—Except as authorized under paragraph (1), the determinations of the Commission under this section and any exclusion from entry or delivery or demand for redelivery in connection with the enforcement of an order by the Commission under this section may not be reviewed by any court, including for constitutional claims, whether by action in the nature of mandamus or otherwise.

“(3) PROCEDURES FOR REVIEW OF PRIVILEGED INFORMATION.—If an appeal is brought under paragraph (1) and the administrative record contains classified or other information subject to privilege or protections under law, that information shall be submitted confidentially to the court and the court shall maintain that information under seal.

“(4) APPLICABILITY OF USE OF INFORMATION PROVISIONS.—The use of information provisions of sections 106, 305, 405, and 706 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1806, 1825, 1845, and 1881e) shall not apply to an appeal under paragraph (1).

“(f) INAPPLICABILITY OF THE ADMINISTRATIVE PROCEDURE ACT.—

“(1) IN GENERAL.—The requirements of subchapter II of chapter 5 of title 5, United States Code, shall not apply to—

“(A) an action conducted by the Commission under paragraphs (1) through (3) of subsection (c); or

“(B) the procedures for exclusion under paragraphs (4) and (5) of subsection (d).

“(2) ADJUDICATION.—Any adjudication under this section shall not be subject to the requirements of sections 554, 556, and 557 of title 5, United States Code.

“(g) FREEDOM OF INFORMATION ACT EXCEPTION.—Section 552 of title 5, United States Code (commonly referred to as the ‘Freedom of Information Act’), shall not apply to the activities conducted under this section.

“(h) REGULATIONS.—The Commission may prescribe such regulations as the Commission considers necessary and appropriate to carry out this section.

“(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

“(j) DEFINITIONS.—In this section:

“(1) ARTICLE.—The term ‘article’ includes any article or component of an article.

“(2) FOREIGN AGENT; FOREIGN INSTRUMENTALITY; IMPROPER MEANS; MISAPPROPRIATION; OWNER; TRADE SECRET.—The terms ‘foreign agent’, ‘foreign instrumentality’, ‘improper means’, ‘misappropriation’, ‘owner’, and ‘trade secret’ have the meanings given those terms in section 1839 of title 18, United States Code.

“(3) INTERESTED PERSON.—The term ‘interested person’, with respect to an allegation under subsection (b)(5), means a person named in the allegation or otherwise identified by the Commission as having a material interest with respect to the allegation.”

(c) CLERICAL AMENDMENT.—The table of contents for the Tariff Act of 1930 is amended by inserting after the item relating to section 341 the following:

“Sec. 342. National security exclusion for articles or components of articles that contain, were produced using, benefit from, or use trade secrets misappropriated or acquired through improper means by a foreign agent or foreign instrumentality.”

(d) CONFORMING AMENDMENT.—Section 514(a)(4) of the Tariff Act of 1930 (19 U.S.C.

1514(a)(4)) is amended by striking “a determination appealable under section 337 of this Act” and inserting “in connection with the enforcement of an order of the United States International Trade Commission issued under section 342”.

**SA 4435.** Mr. GRASSLEY (for himself and Mr. BRAUN) submitted an amendment intended to be proposed to amendment SA 3867 submitted by Mr. REED and intended to be proposed to the bill H.R. 4350, to authorize appropriations for fiscal year 2022 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle B of title XII, add the following:

**SEC. 1216. EVALUATION OF AND REPORT ON WITHDRAWAL FROM AFGHANISTAN.**

(a) EVALUATION.—

(1) IN GENERAL.—The Special Inspector General for Afghanistan Reconstruction (in this section referred to as the Inspector General) shall conduct an evaluation of the performance of the Afghanistan National Defense and Security Forces (in this section referred to as the “ANDSF”) during the period beginning on February 1, 2020, and ending on August 31, 2021.

(2) ELEMENTS.—The evaluation required by paragraph (1) shall include the following:

(A) A determination as to the reason the ANDSF proved unable to defend Afghanistan from the Taliban following the withdrawal of the United States Armed Forces.

(B) An assessment of the impact such withdrawal had on the performance of the ANDSF.

(C) With respect to efforts made by the United States Armed Forces since 2001 to provide training, assistance, and advice to the ANDSF, an analysis of any such effort that impacted the performance of the ANDSF following such withdrawal.

(D) An assessment of the current status of—

(i) equipment provided to the ANDSF by the United States; and

(ii) ANDSF personnel who were trained by the United States.

(E) An identification of the types of military equipment provided by the United States to the military or security forces of Afghanistan that was left in Afghanistan after the withdrawal of the United States Armed Forces, including equipment provided to the air force of Afghanistan.

(F) An assessment whether—

(i) the Taliban has control over the equipment described in subparagraph (B); and

(ii) such equipment is being moved or sold to any third parties.

(G) An assessment whether government officials of Afghanistan fled Afghanistan with United States taxpayer dollars.

(H) An assessment whether funds made available from the Afghan Security Forces Fund—

(i) were stolen by government officials of Afghanistan; or

(ii) diverted from the originally intended purposes of such funds.

(I) An assessment whether equipment provided to the military or security forces of Afghanistan was used to assist government officials of Afghanistan in fleeing Afghanistan.

(J) Any other matter the Inspector General considers appropriate.

(3) COOPERATION OF SECRETARY OF DEFENSE.—To the extent practicable and consistent with law, the Secretary of Defense shall provide to the Inspector General any such information or assistance as the Inspector General may request for the purpose of conducting the evaluation required by this subsection.

(b) REPORT.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Inspector General shall submit to the congressional defense committees one or more reports the results of the evaluation conducted under subsection (a).

(2) FORM.—The report required by paragraph (1) shall be submitted in unclassified form but may include a classified annex.

**SA 4436.** Mr. GRASSLEY (for himself, Mr. SANDERS, and Mr. BRAUN) submitted an amendment intended to be proposed to amendment SA 3867 submitted by Mr. REED and intended to be proposed to the bill H.R. 4350, to authorize appropriations for fiscal year 2022 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes; which was ordered to lie on the table; as follows:

At the end of subtitle A of title X, add the following:

**SEC. 1004. DEFENSE FINANCIAL SYSTEMS COMMISSION.**

(a) ESTABLISHMENT.—There is established in the legislative branch the Defense Financial Systems Commission (in this section referred to as the “Commission”).

(b) DUTIES.—

(1) IN GENERAL.—The Commission shall—

(A) review the financial management systems of the Department of Defense, including policies, procedures, and past and planned investments;

(B) review the spending of the Department on financial management systems, including new investments, operations and maintenance, and legacy systems;

(C) determine which financial management systems of the Department meet the standards described in paragraph (2);

(D) make recommendations to the Secretary of Defense and the secretaries of the military departments with respect to—

(i) which financial management systems need to be replaced or modified, and what new systems are needed, to ensure that the financial management systems of the Department meet the standards described in paragraph (2); and

(ii) improving such systems and related processes to ensure effective internal control and ability to achieve auditable financial statements and meet other financial management and operational needs, including, as appropriate, recommendations for both short-term and long-term actions; and

(E) assess the progress of the Department of Defense in implementing any previous recommendations of the Commission.

(2) STANDARDS DESCRIBED.—A financial management system meets the standards described in this paragraph if the system—

(A) complies with—

(i) the accounting principles, standards, and requirements prescribed under section 3511 of title 31, United States Code;

(ii) the most recent governmentwide financial management plan prepared under section 3512 of that title; and

(iii) guidance and recommendations made by the Comptroller General of the United

States, the Inspector General of the Department of Defense, and other auditors;

(B) addresses the findings of financial statement audits; and

(C) provides reliable, useful, and timely information to support the preparation of auditable financial statements and meet other financial management and operational needs, including, as appropriate, with respect to both short-term and long-term actions.

(3) REPORT REQUIRED.—Not later than March 31 and September 30 of fiscal year 2022 and each fiscal year thereafter, the Commission shall submit to the Secretary of Defense, the secretaries of the military departments, Congress, and the Comptroller General of the United States a report that includes—

(A) the findings of the reviews conducted under subparagraphs (A) and (B) of paragraph (1);

(B) the determinations required by subparagraph (C) of that paragraph;

(C) the recommendations required by subparagraph (D) of paragraph (1);

(D) the results of the assessment required by subparagraph (E) of that paragraph; and

(E) a description of the work the Commission plans to conduct during the six-month period following submission of the report.

(c) COMMISSION MEMBERSHIP.—

(1) NUMBER AND APPOINTMENT.—The Commission shall be composed of three members appointed by the Comptroller General of the United States.

(2) QUALIFICATIONS; REPRESENTATION.—In appointing members of the Commission, the Comptroller General shall include individuals—

(A) knowledgeable of accounting, auditing, financial management, information technology, data science, change management, and the operating environment of the Department of Defense; and

(B) to the extent feasible, who have relevant experience based in—

(i) the Department;

(ii) the Federal Government (other than the Department); and

(iii) the private sector.

(3) TERMS.—

(A) IN GENERAL.—A member of the Commission shall be appointed for a term of 3 years, except that the Comptroller General shall designate staggered terms for the members first appointed.

(B) VACANCIES.—

(i) IN GENERAL.—A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(ii) MEMBERS APPOINTED TO FILL VACANCIES.—Any member of the Commission appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of that term.

(iii) CONTINUATION OF SERVICE TILL SUCCESSOR TAKES OFFICE.—A member of the Commission may serve after the expiration of that member's term until a successor has taken office.

(4) CHAIRPERSON; VICE CHAIRPERSON.—

(A) IN GENERAL.—The Comptroller General shall designate a member of the Commission as the Chairperson and a member of the Commission as the Vice Chairperson at the time of their appointment and for that term of appointment.

(B) VACANCIES.—If the member of the Commission designated under subparagraph (A) as the Chairperson or the Vice Chairperson leaves the Commission before the end of the member's term, the Comptroller General may designate another member of the Commission as the Chairperson or the Vice Chairperson for the remainder of the term of that member's term.

(d) MEETINGS.—The Commission shall meet at the call of the Chairperson.

(e) COMPENSATION AND EMPLOYMENT STATUS OF MEMBERS AND STAFF.—

(1) COMPENSATION OF MEMBERS.—A member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which the member is engaged in the performance of the duties of the Board.

(2) TRAVEL EXPENSES.—A member of the Commission may be paid travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the member's home or regular place of business in the performance of services for the Commission, as authorized by the chairperson of the Commission.

(3) FINANCIAL DISCLOSURE REQUIREMENTS.—A member of the Commission shall be considered an employee of Congress whose compensation is disbursed by the Secretary of the Senate for purposes of applying title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), except that a member of the Commission is required to file public financial disclosure reports without regard to their number of days of service or rate of pay.

(4) MEMBERS EMPLOYED BY OTHER AGENCIES.—The employment status and pay of a member of the Commission who is employed by another Federal agency shall not be affected by the service of the member on the Commission.

(5) PAY AND BENEFITS OF STAFF OF COMMISSION.—

(A) IN GENERAL.—Subject to subparagraph (B), an employee of the Commission (other than a member of the Commission) shall, for purposes of pay and employment benefits, rights, and privileges, be treated as an employee of the Senate.

(B) CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—For purposes of the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.), with respect to provisions of law covered by part A of title II of that Act (2 U.S.C. 1311 et seq.)—

(i) an employee of the Commission shall be considered to be an employee of the Senate, as defined in section 3 of that Act (2 U.S.C. 1301); and

(ii) the Commission shall be considered to be the employing office, as defined in that section, for that employee.

(6) NOT TREATED AS EMPLOYEES OF GOVERNMENT ACCOUNTABILITY OFFICE.—Members and employees of the Commission may not be treated as employees of the Government Accountability Office for any purpose.

(f) DIRECTOR AND STAFF; EXPERTS AND CONSULTANTS.—The Commission shall hire such staff and engage such experts and consultants knowledgeable of accounting, internal controls, auditing, financial management, information technology, data science, change management, and the operating environment of the Department of Defense, as may be necessary to carry out the duties of the Commission.

(g) POWERS AND AUTHORITIES.—Subject to such review as the Comptroller General deems necessary to assure the efficient administration of the Commission, the Commission may—

(1) employ and fix the compensation of an Executive Director (subject to the approval of the Comptroller General) and such other personnel as may be necessary to carry out the duties of the Commission without regard to the provisions of subchapter I of chapter